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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,637	02/15/2001	Heinz-Jurgen Bachelier	ESN-38	5572
26875	7590	04/14/2004		
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER COOLEY, CHARLES E	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,637

Applicant(s)

BACHELIER ET AL.

Examiner

Charles E. Cooley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 and 5-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-19 is/are allowed.
- 6) ☒ Claim(s) 2, 5, 6, 9-11, 14 and 20 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 12, 13, 15 and 21-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11212003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 21 NOV 2003 has been considered by the examiner. Note the attached PTO-1449 form.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2, 5, 6, 9, 10, 11, 14, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Cadeo (US 4,786,183 newly cited by applicant in the IDS filed 21 NOV 2003).

The patent to Cadeo discloses a homogenizer comprising a rotor 2 intended for processing material in a surrounding housing (e.g., a housing 28-30 as seen in Fig. 5); the rotor 2 being mounted for rotation in such a housing; a drive device 14 or 20 coupled to rotate the rotor 2; a rotatable element 1 coupled to the drive device 14 and mounted for rotation in the housing, the rotatable element 1 driven for rotation independently of the rotor; the rotatable element 1 being constructed as an impeller 1 with a plurality of pump buckets (the curved vanes denoted by 1 in Figure 2 and as clearly seen in Figures 3 and 4 are deemed equivalent to the recited "pump buckets" especially in view of the impeller 1 being described as a "pump impeller" – col. 2, lines

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30-35 of Cadeo); two coaxial drive shafts 3, 10 coupled with the rotatable element 1 and the rotor 2 to drive the rotatable element or the rotor; wherein at least one 10 of the two drive shafts 3, 10 is constructed as a hollow shaft 10; wherein the rotatable element 1 can be driven in the same direction as or opposite to the rotor (col. 2, lines 33-35); wherein at least one of the rotor 2 and the rotatable element 1 has a base plate (the plate or hub which attaches the impeller to the respective shaft as seen in Figure 2) which is coupled with the corresponding drive shaft 3 or 10, the rotational axes of the drive shafts are positioned essentially vertically in operation (Figs. 1-4), and the drive shafts are each driven by a belt 15 or 22; wherein respective drive motors 20, 21 are operable to rotate the respective drive shafts 3, 10; the drive motors 20, 21 being inherently capable of being controlled (note claims 10 and 11 are devoid of any structure to accomplish the recited functions and the examiner takes the reasonable position that the drive motors 20, 21 of Cadeo are inherently controllable by well known means known to those skilled in the art to alter the rotational speed and/or direction of rotation of the motors as is common in the motor control art) such that the rotor and the rotatable element can be rotated at adjustable relative speeds in the same or opposite directions (col. 3, lines 18-25); the rotatable element 1 being driven in the opposite direction to the rotor 2 (col. 3, lines 7-25).

Allowable Subject Matter

4. Claims 16-19 are allowed.

5. Claims 7, 8, 12, 13, 15, 21, 22, 23, and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 26 MAR 2004 have been fully considered but they are not persuasive.

The reference to Cadeo provided by applicant in the IDS filed 21 NOV 2003 mandates the new ground of rejection under 35 USC 102(b). Contrary to applicant's belief, Cadeo is held to disclose the recited pump buckets as explained in the rejection. Cadeo refers to the impellers as pump impellers 1 and 2 that provide the pumping action via the curved vanes (equivalent to the recited pump buckets) as shown in the Figures. The examiner does agree that Cadeo is silent with respect to stator blades and hence claims drawn to such features are held allowable. FR 606,508 is not considered to be relevant to the claimed invention.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, appearing to read "Charles E. Cooley", followed by a long horizontal flourish.

Charles E. Cooley
Primary Examiner
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9 April 2004